UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

LEONARD A. SEIDLITZ, : CASE NO. 1:07-cv-02471

.

Plaintiff, :

:

vs. : OPINION & ORDER

[Resolving Doc. 15].

COMMISSIONER OF, SOCIAL SECURITY

:

Defendant.

:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this opinion and order, the Court considers the Plaintiff's motion for attorney's fees pursuant to the <u>Equal Access to Justice Act. 28 U.S.C. §2412(d)(1)(A)</u>. [<u>Doc. 15</u>]. The Defendant does not oppose the motion. [<u>Doc. 16</u>]. For the reasons stated below, the Court **GRANTS** the Plaintiff's motion.

On April 14, 2007, this Court adopted Magistrate Perelmen's recommendation that the Court reverse and remand a decision of the Commissioner of Social Security denying Plaintiff William Jewel's application for disability insurance benefits. [Doc. 13]. Accordingly, the Plaintiff is the "prevailing party" in this case and entitled to fees. *See Shalala v. Schaefer*, 509 U.S. 292, 300 (1993).

To award fees, this Court must determine that the Commissioner's position was not "substantially justified." *Pierce v. Underwood*, 487 U.S. at 565 (1988). The Commissioner bears

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the burden to establish that his position was substantially justified. See E.W. Grobbel Sons, Inc. v.

NLRB, 176 F.3d 875, 878 (6th Cir. 1999). As the Commissioner does not oppose the award of

fees, the Court finds the Commissioner has not borne this burden. Therefore, the Equal Access to

Justice Act entitles the Plaintiff to fees.

Plaintiff's counsel represents that she completed 17.25 attorney hours and asks this Court

award her fees at the rate of \$156.00 per hour. The Plaintiff further requests the \$350.00 filing

fee in costs. The Plaintiff requests a total of \$3,041.00. The Equal Access to Justice Act defined

the appropriate hourly fee as \$125 in 1996, but the Court has discretion to make adjustments to

the hourly rate based upon increases in the Consumer Price Index. Begley v. Secretary of Health

and Human Services, 966 F.2d 196, 199 (6th Cir. 1992). The Consumer Price Index rose from

154.4 in January, 1996 to 198.3 in December, 2006. [Doc. 15, Ex 2]. The Court finds this rise

justifies an hourly rate of \$156.00.

For these reasons, the Court **GRANTS** the Plaintiff's motion for fees and costs and orders

the Commissioner pay them in the amount of \$3,041.00.

IT IS SO ORDERED.

Dated: July 18, 2008

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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